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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,753	08/26/2003	Ron H. McCoy	3429	7339

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EXAMINER

ELKINS, GARY E

ART UNIT PAPER NUMBER

3727

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

10/649,753

Applicant(s)

MCCOY, RON H.

Examiner

Gary E. Elkins

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3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Rejections - 35 USC § 102 - 35 USC § 103***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2 and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Webb. Webb discloses a universal tool holder formed of rigid plastic and including a generally rectangular cross section and an "attachment means" 221 at an upper end of the rear of the holder. No distinction is seen between

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the claimed holster and that shown in Webb as a result of the claimed intended use to hold a pricing or labeling gun. Alternatively, it would have been obvious to size and shape the tool holder of Webb to hold a pricing or labeling gun. The sizing and shaping of a general tool holder to hold a known tool would have been prima facie obvious to one of ordinary skill in this art as a matter of selection with respect to what tool one wishes to hold.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Webb in view of Cleveland. Webb does not disclose a plastic selected from the claimed group of plastics.

Cleveland teaches that it is known to form a belt mounted holder from PVC or ABS. It would have been obvious to make the holder of Webb from PVC or ABS as taught by Cleveland since PVC and ABS are widely known and used and would provide excellent durability and strength for the holder.

6. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb in view of Tebbutt. Webb does not disclose a pair of flutes defining a notch in the front panel of the holder (cl. 4) and does not disclose generally concave upper edges on the side panels (cl. 5). Tebbutt discloses a holder including a notch A in the front panel and concave upper edges on the side panels to allow easy access, insertion and removal of the contents of the holder. With respect to claim 4, it would have been obvious to make the holder of Webb with a notch in the front wall as taught by Tebbutt to permit easy removal of the contents with the fingers. With respect to claim 5, it would have been obvious to make the side wall upper edges of the holder in Webb with a generally concave shape as taught by Tebbutt to facilitate easy access and insertion of the contents.

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7. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb in view of Gravatt. Webb does not disclose a clip as the attachment means for the holder. Gravatt teaches that it is known to connect a belt holder to a belt using an integral clip (71). It would have been obvious to substitute a belt clip for the belt apertures (224B) in Webb as taught by Gravatt to allow easy removal and positioning of the holder without removing the belt. Belt clips are notoriously well known in this art.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Webb. Webb discloses a holder thickness of .125 inches, but does not disclose a thickness within the range of .05 to .10 inches. It would have been obvious to make the holder thickness between .05 to .10 inches as an arbitrary change in the thickness of the holder. No functional distinction is seen nor has any been asserted by Applicant to select a thickness between .05 and .10 inches as compared to .125 inches. The arbitrary selection of one thickness over another is within the level of skill in this art.

### *Conclusion*

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

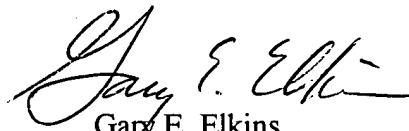
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (571)272-4549.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727

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27 June 2005